

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

Apollo MedFlight, LLC,

Plaintiff,

v.

BlueCross BlueShield of Texas, a Division
of Health Care Service Corporation,

Defendant.

JURY DEMANDED

CIVIL ACTION NO. 2:18-cv-166

AMENDED AGREED MOTION TO EXTEND DEADLINES

Plaintiff Apollo MedFlight, LLC (“Apollo”), with the consent and agreement of Defendant BlueCross BlueShield of Texas, a Division of Health Care Service Corporation’s (“BCBSTX”), now moves this Court to extend the following deadlines in the Court’s Amended Scheduling Order as follows:

- **Deadline for parties seeking affirmative relief to designate experts and comply with expert disclosure requirements.** The parties request an extension of this deadline from Wednesday December 18, 2019 until Monday, February 17, 2020.
- **Deadline for parties opposing affirmative relief to designate experts and comply with expert disclosure requirements.** The parties request an extension of this deadline from Wednesday, January 29, 2020 until Monday, March 30, 2020.
- **Deadline for rebuttal reports.** The parties request an extension of the deadline from Wednesday, March 4, 2020 until Friday, May 29, 2020.
- **Deadline for objections to expert witnesses.** The parties request an extension of this deadline from Friday, June 5, 2020 until Friday August 7, 2020.

- **Deadline for amendment of pleadings.** The parties request an extension of this deadline from Friday August 14, 2020 until Friday, October 16, 2020.
- **Deadline for completion of discovery.** The parties request an extension of this deadline from Friday, May 1, 2020 until Friday, July 3, 2020.
- **Deadline for summary judgment/dispositive motions.** The parties request an extension of this deadline from Friday June 5, 2020 until Friday, August 7, 2020.
- **Deadline for motions not otherwise covered.** The parties request an extension of this deadline from Friday, August 28, 2020 until Friday, October 30, 2020.
- **Deadline for Rule 26(a)(3) disclosures.** The parties request an extension of this deadline from Friday, October 9, 2020 until Friday, December 11, 2020.
- **Trial ready date.** The parties request an extension of the trial ready date from Tuesday, December 1, 2020 until Monday, February 1, 2021.

The parties request that these agreed extensions be granted so that justice will be done, and not for delay or for any other improper purpose. The parties agree that good cause exists to permit this amendment under the factors for analyzing good cause in this Circuit, which are “(1) the explanation for the failure to [meet the deadline]; (2) the importance of the [amendment]; (3) potential prejudice in allowing the [amendment]; and (4) the availability of a continuance to cure such prejudice.” *S&W Enterprises, L.L.C. v. SouthTrust Bank of Alabama, NA*, 315 F.3d 533, 536 (5th Cir. 2003) (quoting *Reliance Ins. Co. v. La. Land & Exploration Co.*, 110 F.3d 253, 257 (5th Cir. 1997)). Each of these factors is met, as shown below:

1. **Explanation of the Need for a Continuance.**

On the first element—the need for the amendment and explanation of the parties’ inability to meet the present deadlines—the extension is necessary due to continuing on-going

discovery, including a pending discovery dispute, and additional time necessary for the Parties' respective experts' to complete their analyses. While the Parties have worked diligently to exchange information and documents, they require additional time to complete necessary discovery to allow experts to review and analyze voluminous data. Moreover, the resolution of a pending discovery dispute has the potential to impact the Parties' respective expert analyses and will govern additional discovery in this dispute, including oral depositions. *See* ECF Nos. 37, 45, and 62. The Parties have not yet engaged in depositions, which is also relevant to expert analysis, in part due to the pendency of the discovery dispute (which involves, among other things, the permissible scope of corporate representative depositions).

Finally, the Parties have discussed potential resolution through alternative dispute resolution, and are currently evaluating the possibility of resolution through ADR; an extension of the current deadline will allow the Parties to defer costs in the event they are able to resolve this matter. The proposed amended scheduling order will provide the Parties the necessary time to fully develop their arguments and conduct adequate discovery, ensure that their experts have the necessary time to complete their analyses and develop their testimony, and allow the parties to efficiently participate in settlement dispute resolution process.

2. The Importance of the Amendment.

On the second element, the parties agree that the amendment is important, as the extra time will permit both parties to fully develop their arguments and fully and fairly present their respective arguments. This additional time will permit the parties a better opportunity to clarify before the time of trial all of the issues in dispute, which will permit the trial to be a more effective and just adjudication of the parties' disagreement. For the reasons set forth above regarding

the need for these amendments, the amendments are each important to the presentation of the parties' respective cases.

3. Potential Prejudice in Allowing the Amendment.

Neither Party is likely to suffer prejudice from this amendment. Though this case has been on file for a year, it is still relatively early in its development, as a final order on Defendant's Motion to Dismiss was issued just two months ago. Moreover, both parties have agreed to this request. Indeed, not only would neither party be prejudiced by this request, but both parties would benefit for the reasons given above regarding the need for and importance of the amendment.

4. The Availability of a Continuance to Cure any Potential Prejudice.

There is no prejudice to either party from granting the extensions requested in the motion, so there is no prejudice to cure by granting a continuance. Moreover, this agreed motion and the proposed scheduling order build in extensions of all other relevant deadlines (for the reasons set forth above), such that a further continuance is likely to be unnecessary. It is for this reason that the parties have requested extensions of each of these deadlines, as opposed to merely the most immediate deadlines: to avoid a situation where the extension of an initial deadline, on which other deadlines rely, would reduce the opportunity of the parties to analyze and fully integrate the materials disclosed upon the earlier deadline into their respective cases.

A proposed second amended scheduling order is attached to this Motion as **Exhibit A**.

Dated: December 23, 2019

Respectfully submitted,

By: /s/ Andrew Cookingham

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CERTIFICATE OF CONFERENCE

I certify that on December 18 and 22, 2019, I conferred with Defendant's counsel via email, and on December 20, 2019 I conferred with Defendant's counsel via telephone. Defendants agree to the relief sought in this Motion.

/s/ Andrew Cookingham
Andrew Cookingham

CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiff hereby certifies that the foregoing document was e-filed with the Court and served on all counsel of records on December 23, 2019.

/s/ Andrew Cookingham
Andrew Cookingham